

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SHANE JONES,

Plaintiff,

V.

MIKE DAVIS, and FRED DOUGLAS,

## Defendants.

CASE NO. C09-5186FDB-JRC

REPORT AND  
RECOMMENDATION TO  
DISMISS COMPLAINT  
WITHOUT PREJUDICE

Noted for June 5, 2009

This case has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(B). This matter comes before the court upon Plaintiff's request to withdraw his complaint (Doc. 8). After reviewing Plaintiff's motion, the undersigned recommends that the court GRANT the motion and dismiss this matter without prejudice pursuant to Rule 41(a).

Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

Plaintiff filed his complaint with the court on or about April 15, 2008. The matter was reviewed and the court issued an order explaining the complaint contained certain deficiencies. Plaintiff was directed to cure the deficiencies and/or show cause why the matter should not be

1 summarily dismissed. In response, Plaintiff filed the instant motion to voluntarily dismiss the  
2 case. The matter has not been served on the defendant. Plaintiff's request should be  
3 GRANTED, and this matter should be dismissed without prejudice.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
5 Procedure, the parties shall have ten (10) days from service of this Report to file written  
6 objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
7 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
8 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on June  
9 5, 2009, as noted in the caption.

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11 DATED this 11th day of May, 2009.  
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15 J. Richard Creatura  
16 United States Magistrate Judge  
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